

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6240 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KALPESH @ KACHHIYO ARVINDBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr Kamal Mehta, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 05/11/96

ORAL JUDGEMENT

It is now well settled that merely because the detinue is a bootlegger, he cannot be preventively detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act') unless, as laid down in sub-section (4) of section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. Reference may

be made to a decision of the Apex Court in the case of Piyush v. Police Commissioner, Ahmedabad, reported in AIR 1989 SC 491. With the assistance of the learned Advocates, I have gone through the material available on record. There is nothing to show that the activities of the petitioner as a bootlegger, has affected adversely or likely to affect adversely the maintenance of public order. Thus, in my view, the order of detention is illegal and is not sustainable.

2. In view of the aforesaid, this Special Civil Application is allowed and the order of detention dated 16.7.1996 is quashed and set aside. The petitioner-detenu shall be released forthwith if not required in any other case.

Rule made absolute accordingly.

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